

5 FAM 470 ACCESS TO AND USE OF INFORMATION

5 FAM 471 DEPARTMENT EMPLOYEES

(TL:IM-19; 10-30-95)

a. Employees of the Department, its domestic field offices, posts abroad, and U.S. missions to international organizations may access records based on the following general restrictions:

(1) Access is in accordance with applicable procedures and requirements of the security regulations (12 FAM), the personnel regulations (3 FAM), the regulations regarding Inspector General files (2 FAM), and the provisions of the Privacy Act of 1974 (see 5 FAM 462).

(2) Access to and use of records by employees is subject to the determination of a need-to-know by offices responsible for the information. An employee is not entitled to receive information only by virtue of official position or by holding a security clearance. The employee must have a need for access to particular records sought in connection with performance of official Government duties.

(3) Limit Foreign Nationals' access to documents required to perform official duties, consistent with provisions of the security regulations. (See 12 FAM).

(4) 22 U.S.C. 4004 states that performance records of the Department relating to Foreign Service employees, including performance material, are personal and private in nature and subject to inspection by the following personnel only:

(a) The President;

(b) Legislative and appropriations committees of Congress charged with considering legislation and appropriations for the Department or representatives authorized by the committees;

(c) Personnel identified in 3 FAM .

(5) Records relating to the following generally may not be used except by authorized employees for official purposes:

(a) Citizenship;

(b) Unsettled claims;

- (c) Department and Foreign Service personnel matters;
- (d) Issuance or refusal of visas or permits to enter the United States; and
- (e) Intelligence and investigative records.

Such records, however, which are not exempted from disclosure under the Freedom of Information Act. (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), or which have been retired to the National Archives, may be made available to other persons in accordance with regulations of the Department or the National Archives. See 22 CFR, part 171.

(6) Classified, investigative and other sensitive records, originating in other agencies and furnished to the Department, are communicated to a third agency or person only under security regulations and with the consent of the originating agency. See Executive Order 12958 and 22 CFR 171.

(7) Access to records by employees for purposes other than in connection with performance of official Government duties shall be governed by procedures and requirements of public access regulations (see 5 FAM 477).

b. Arrange to use Departmental or post records transferred to the National Archives or Federal Records Centers through the Research and Retrieval Branch (A/IM/IS/OIS/IA/RB). Requests for records can be made by telephone, a memorandum describing the record, or by visiting OIS/IA/RB, Room 1239, Main State.

5 FAM 472 EMPLOYEES OF OTHER FEDERAL AGENCIES

(TL:IM-19; 10-30-95)

a. S/S is responsible for official communication and conveyance of information from the Department to the White House and other Government departments and agencies (See 1 FAM 022.2). Documents requested by such agencies or departments should be provided to S/S under cover of a memo for transmittal from the Executive Secretary to his/her counterpart in the requesting agency or department.

b. Any requests for Office of Inspector General records should be referred to the Office of Inspector General.

c. Records maintained in offices and posts can be made available to other Federal agencies, only when deemed advisable by officers responsible for their custody and when not prohibited by privacy, security and other statutory restrictions.

d. Each post, usually the Administrative Officer, shall establish procedures for handling requests from the personnel of other U.S. government agencies for access to post records for official purposes. (See 5 FAH-4)

e. Inactive records that have been retired by offices or posts can be made available to other federal agencies upon clearance with the office of origin or action. The release of the records must also be subject to the regulations and controls contained in 5 FAM .

f. Requests, from other Federal agencies, for records needed for historical research must be coordinated with the Historical Office (PA/HO).

5 FAM 473 REQUESTS FROM CONGRESS AND THE GENERAL ACCOUNTING OFFICE (GAO)

(TL:IM-19; 10-30-95)

a. The policy of the Department is to cooperate fully with requests for information from Congress and representatives of the General Accounting Office, and to be as forthcoming as possible in responding to such requests. If a request is received from a committee or subcommittee chair, on a subject within its jurisdiction, the request should be processed under subsection (d) of the FOIA and only a claim of Executive Privilege could be asserted to justify nondisclosure. Requests from individual members of Congress should be processed as a standard individual request under the FOIA, but with particular regard for the considerations of congressional relations and discretionary disclosure. The procedures for processing information requests from members of Congress and representatives from GAO are contained in 5 FAH-4 .

b. Any Department office or bureau receiving requests for Office of Inspector General documents, reports, or information shall refer such requests to the Inspector General for response.

c. S/S (Executive Secretariat) is charged with the responsibility for ensuring that all requests for Department documents (cables, memoranda, etc.) from the Congress and GAO are handled promptly and with appropriate seventh floor review. Unless circumstances dictate a different result, S/S, (FMP, with S/S support, for GAO requests), will task the bureau with the greatest interest and expertise in the subject matter of the request, to take the lead responsibility for ensuring that the request is answered in a timely fashion.

5 FAM 474 FORMER PRESIDENTIAL APPOINTEES

(TL:IM-19; 10-30-95)

Former Presidential appointees may have access to documents that they originated, reviewed, or signed while serving as Presidential appointees, subject to appropriate provisions in accordance with Executive Order 12356 or 12958. The appropriate security clearance is necessary when classified documents are requested. Contact the Employee/Contractor Clearance Branch (DS/DSS/ICI/PSS/EC/C) to determine whether the former appointee(s) have the needed security clearance.

5 FAM 475 CONTRACTORS

(TL:IM-19; 10-30-95)

a. All data created by contractors for the Department are official records and should be managed in accordance with records management legislation as codified in 44 U.S.C., chapters 21, 29, 31, and 33; the Freedom of Information Act (5 U.S.C. 552); and the Privacy Act (5 U.S.C. 552a). These records will be scheduled for disposition in accordance with 36 CFR, part 1228.

b. The contracting officer from the appropriate liaison or functional office ensures that the contractor is informed of the requirements for access to Department records. These guidelines are available from the Information and Privacy Coordinator, A/IM/IS/FPC.

c. Contractors' access to classified records is subject to security regulations (12 FAM).

5 FAM 476 LITIGATION RELATED REQUESTS FOR OFFICIAL INFORMATION OR TESTIMONY

(TL:IM-19; 10-30-95)

a. All requests for official information or testimony involving litigation are to be handled under 22 CFR Part 172

b. The Office of the Legal Advisor (L) must be informed of requests for records or information connected with litigation. No disclosure of official records to a request outside the Department for use in litigation should be made without the concurrence of the Office of Legal Adviser. Maintain these records separately to avoid inadvertent disposal and label them with Form DS-1851, Hold For Litigation.

5 FAM 477 ACCESS TO THE PUBLIC

5 FAM 477.1 General Policy

(TL:IM-19; 10-30-95)

a. Unclassified information, documents, and forms that have previously been provided to the public as part of the normal services of the Department will continue to be made available.

b. All identifiable records of the Department, not available under subsection a, above, shall be made available, to the public, under the Freedom of Information Act, E.O. 12958, Privacy Act, and Ethics in Government Act, upon compliance with the policies and procedures established in 22 CFR Part 171, Subchapter R, Access to Information.

c. Requests by mail and referrals from other agencies should be addressed to the Information and Privacy Coordinator (A/IM/IS/FPC), Room 1239, Department of State, Washington, DC 20520. This office will coordinate the request with Department field offices and overseas posts. Submit all unfilled requests to the Information and Privacy Coordinator.

d. Refer any request received through normal channels of contact with the public, media, or the Congress to the Information and Privacy Coordinator (A/IM/IS/FPC), for processing under the appropriate statute or executive order. Notify the requester that the request has been referred to the Information and Privacy Coordinator.

5 FAM 477.2 Access To Archived Records

(TL:IM-19; 10-30-95)

The Department ordinarily transfers custody of records as soon as practicable after they become 30 years old to the National Archives. Correspondence regarding access to these records should be addressed to the Chief, Diplomatic Branch, Civil Records Division, National Archives and Record Administration, Washington, DC 20400.

5 FAM 477.3 Authorities

(TL:IM-19; 10-30-95)

- (a) 5 U.S.C. 552 (Freedom of Information Act);
- (b) 5 U.S.C. Appendix (Ethics in Government Act; and
- (c) 22 CFR, Part 171, Subchapter R, Access to Information.

5 FAM 478 THROUGH 479 UNASSIGNED